## CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:		Force	<b>☑</b> D	iscourt.	☐ U.S.
Julia Moran		Squad #6	202004047		Abuse	□ O	.L.	☐ Injury
Incident Date(s)		Location of Incident:	•	Pı	recinct:	18 Mo	o. SOL	EO SOL
		East 118th Street and 3rd Avenue 25th Precinct stationhouse			25	11/20	0/2021	5/4/2022
Date/Time CV Reported		CV Reported At:	How CV Reported:		Date/Time	Receive	d at CCI	RB
Mon, 06/08/2020 11:27 AM		CCRB	Call Processing System	]	Mon, 06/08	8/2020	11:27 AN	М
Complainant/Victim	Туре	Home Addre	ess					
Witness (sa)		Home Addus						
Witness(es)		Home Addre	SS					
Subject Officer(s)	Shield	TaxID	Command					
1. POM Brandon Gembecki	01517	949015	NARCBMN					
2. POM Brian Mahon	26892	955116	NARCBMN					
3. CPT Daniel Campbell	00000	932403	DBMN					
Officer(s)	Allegation	on			Inve	stigato	r Recon	nmendation
A.CPT Daniel Campbell		At East 118th Street and a Daniel Campbell searche was an occupant	ed the vehicle in whi		n,			
B.POM Brandon Gembecki	Abuse: A	at East 118th Street and Stricer Brandon Gembeck	3rd Avenue in Manh		n,			
C.CPT Daniel Campbell		at East 118th Street and a		nattar 	n,			
D.POM Brandon Gembecki	Police O	at East 118th Street and a fficer Brandon Gembeckuse of force.		attar	1,			
E.POM Brandon Gembecki		at East 118th Street and a fficer Brandon Gembeck (7(2)(b) was an oc	ki searched the vehic					
F.POM Brian Mahon		At East 118th Street and a fficer Brian Mahon search was an occupant	ched the vehicle in v					
G.POM Brandon Gembecki		at East 118th Street and fficer Brandon Gembeck			n,			
H.POM Brian Mahon		at the 25th Precinct Stati whon questioned § 87(2)(b)	onhouse, Police Off	icer				
I.POM Brian Mahon		at the 25th Precinct Stati whon threatened to dama						
J.POM Brian Mahon		at the 25th Precinct Stati ahon threatened § 87(2)(b)	onhouse, Police Off with the use					

Officer(s)	Allegation	Investigator Recommendation
K.POM Brian Mahon	Discourtesy: At the 25th Precinct Stationhouse, Police Officer Brian Mahon spoke discourteously to \$87(2)(b)	

## **Case Summary**

On June 8, 2020, \$87(2)(b) filed the following complaint with the CCRB via the call processing system. On May 20, 2020 at approximately 3:00 p.m., §87(2)(b) was driving on East 118th Street and 3rd Avenue in Manhattan when PO Brandon Gembecki and PO Brian Mahon of the Narcotics Borough Manhattan North and Captain Daniel Campbell of Detective Borough Manhattan North stopped for illegal tints. Cpt. Campbell put his arms on \$87(2)(b) s passenger window and stuck his head inside of \$87(2)(5) s vehicle (Allegation A: Abuse of Authority - \$87(2)(9) . PO Gembecki then asked \$87(2)(b) if he had any guns in his vehicle (Allegation B: Abuse of Authority – ). Cpt. Campbell asked [57(2)(b) if he had gone to jail for possession of guns and what he was doing in the area (Allegation C: Abuse of Authority – \$87(2)(9) ). PO Gembecki asked \$37(2)(b) to exit his vehicle and he refused. PO Gembecki then allegedly told \$37(2)(b) that they would pull him out of his vehicle (Allegation D: Abuse of Authority - \$87(2)(9) solution existed his vehicle to walk to the rear as PO Gembecki and PO Mahon entered the front and back of his vehicle respectively (Allegations E and F: Abuse of Authority - \$87(2)(9) ). At the rear of his vehicle, Cpt. Campbell asked \$87(2)(6) if he had any weapons in his vehicle (within Allegation C). PO Gembecki then asked \$87(2)(b) for the key to his vehicle's glove compartment. Upon informing the officers that he did not have the key with him, PO Gembecki allegedly responded that if § 37(2)(b) did not give him the key, then he would go to jail (Allegation G: Abuse of Authority – \$87(2)(9) was then handcuffed and brought to the 25<sup>th</sup> Precinct stationhouse. In the precinct holding cell, PO Mahon allegedly asked \$87(2)(b) if he had any weapons in his vehicle (Allegation H: Abuse of Authority – \$87(2)(9) ). PO Mahon then allegedly informed \$87(2)(9) that he would use a crowbar to break the vehicle's glove compartment open (Allegation I: Abuse of Authority – \$87(2)(9) ). \$87(2)(b) replied that officers lose their jobs for doing stuff like the officers were doing. PO Mahon allegedly stated that if he lost his job, "then he would go to East Harlem and fucking kill him" (Allegation J: Abuse of Authority – and Allegation K: Discourtesy – \$87(2)(9). During their conversation, PO Mahon also said "shit" at an unspecified time (within allegation K). was released with two summonses for tinted windows and possession of marijuana (BR 01 - 02).

## **Findings and Recommendations**

No BWC was obtained in regards to this incident as none of the officers were assigned cameras at

the time of the incident (BR 17). There was no TARU footage available at this location.

Allegation (A) Abuse of Authority: At East 118<sup>th</sup> Street and 3<sup>rd</sup> Avenue in Manhattan,

Captain Daniel Campbell searched the vehicle in which \$87(2)(6) was an occupant.

Allegation (E) Abuse of Authority: At East 118<sup>th</sup> Street and 3<sup>rd</sup> Avenue in Manhattan, Police

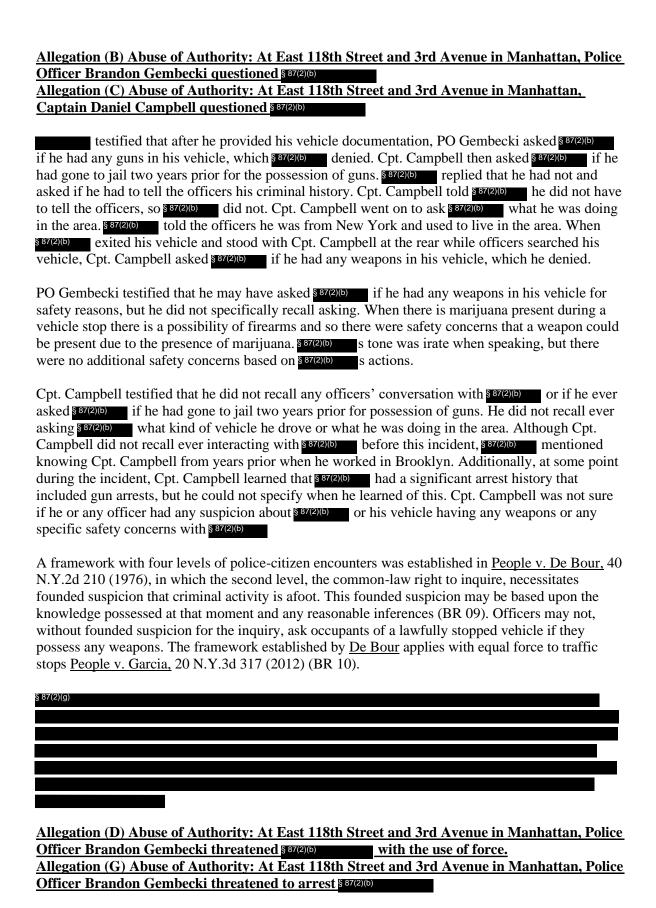
Officer Brandon Gembecki searched the vehicle in which \$87(2)(6) was an occupant.

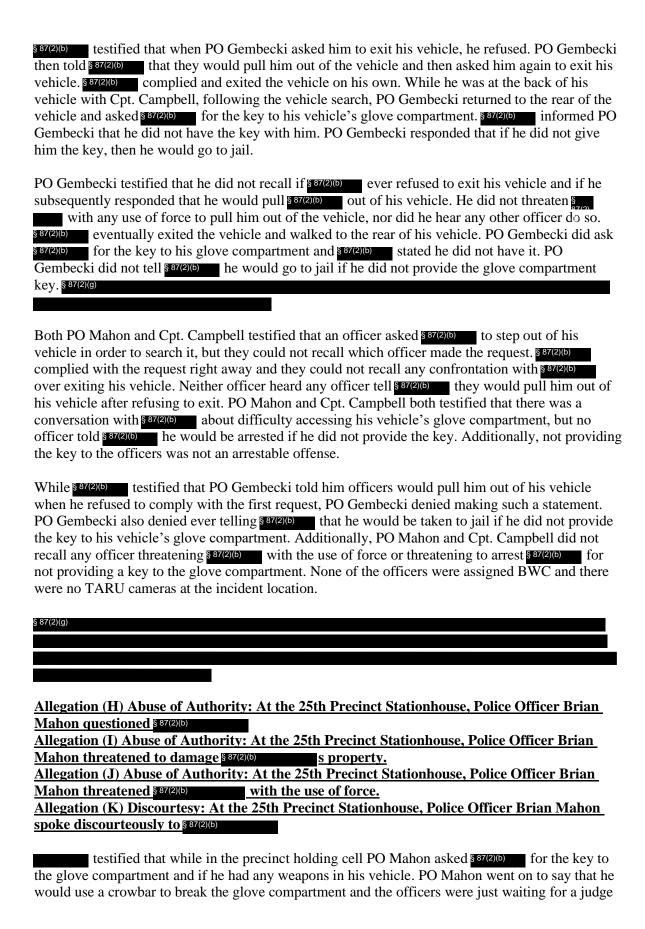
Allegation (F) Abuse of Authority: At East 118<sup>th</sup> Street and 3<sup>rd</sup> Avenue in Manhattan, Police

Officer Brian Mahon searched the vehicle in which \$87(2)(6) was an occupant.

As § 87(2)(b) s vehicle was stopped for a VTL and issued a summons accordingly, no vehicle stop allegation was pleaded.

testified that once stopped for the vehicle infraction, he rolled down all his vehicle's windows. After asking for his license and registration the officers asked him various questions (see Allegations B and C). When Cpt. Campbell was on the passenger side of his vehicle, he placed his arms on the front passenger windowsill and stuck his head inside of his vehicle. Set(2)(b) was ordered to exit his vehicle and complied. Set(2)(b) walked to the rear of the vehicle as PO Gembecki entered through the front driver's side while PO Mahon entered from the back passenger side. The search lasted approximately four minutes. At the conclusion of the search, one of the officers informed Set(2)(b) that they found a clip of marijuana in the front center console of his vehicle. Set(2)(c) did have a clip of marijuana in his vehicle. He could not recall where exactly it was located, but it was not in plain view (BR 03).
Cpt. Campbell testified that he stopped \$87(2)(b) for illegally tinted windows. As he approached \$87(2)(b) s vehicle, \$87(2)(b) rolled his passenger and drivers side windows down. Cpt. Campbell then smelled a strong odor of marijuana emanating from \$87(2)(b) s vehicle. Cpt. Campbell smelled burnt marijuana and it was clear to him that the smell was coming from the vehicle and not the surrounding buildings or people. \$87(2)(b) s vehicle was searched due to the presence of marijuana, but he could not recall which officers specifically searched \$87(2)(b) s vehicle. Cpt. Campbell believed it was probable that he did put his arms on \$87(2)(b) s window and stick his head inside his vehicle when he spoke with \$87(2)(b) (BR 04).
§ 87(2)(g)
PO Gembecki observed numerous loose marijuana cigarettes in the center console when he was at \$87(2)(b) s driver's side window. PO Gembecki searched \$87(2)(b) s vehicle because of the marijuana present (BR 05). PO Mahon observed approximately 30 marijuana cigarettes and loose marijuana in the vegetative state in \$87(2)(b) s vehicle in the center console, cup holder, gear shifter, floor, and seats. It was very small amounts spread over a large portion of the vehicle. PO Mahon then searched the vehicle (BR 06).
PO Gembecki issued summons #\$87(2)(b) to \$87(2)(b) for the unlawful possession of marijuana in the second degree. The summonses noted \$87(2)(b) was observed to have multiple marijuana cigarettes in center console in plain view during lawful stop (BR 01).
PO Gembecki invoiced NYPD Property Clerk Invoice #\$87(2)(b) for one marijuana article in the vegetative form packed in white paper and 19 marijuana articles in the vegetative form packaged in rolling paper. All items were field tested positive (BR 07).
The smell of marijuana smoke, with nothing more, can be sufficient to provide police officers with probably cause to search an automobile and its occupants <u>People v. Chestnut</u> , 43 A.D.2d 260 (1974 (BR 08).
§ 87(2)(g)
§ 87(2)(g)





to give them a search warrant. §87(2)(6) told PO Mahon that officers lose their jobs for "stuff like this." PO Mahon responded that if he lost his job from this, then he would go to East Harlem and "fucking kill him \$87(2)(b) At some point during the conversation, PO Mahon also said, "shit." PO Mahon eventually walked away and \$87(2)(b) was released with two summonses. PO Mahon testified that at East 118<sup>th</sup> Street and 3<sup>rd</sup> Avenue, § 87(2)(b) told the officers to just break the glove compartment and open it because he "did not give a fuck" and it was already broken, but there was no discussion about using force to open his glove compartment while at the precinct. At the stationhouse, PO Mahon lodged \$87(2)(6) in a holding cell. PO Mahon reiterated what was going on, why the officers were searching his vehicle, and the possible outcomes. PO Mahon then had miscellaneous conversation with him about current events and was the main officer interacting with him while in the holding cell. Neither PO Gembecki nor Cpt. Campbell interacted with him at the holding cells. PO Mahon did not ask \$87(2)(b) if he had any weapons in his vehicle and he did not have any safety concerns with \$87(2)(b) or any suspicion that he had weapons in his vehicle. He did not ask for \$87(2)(b) s glove compartment key or tell \$87(2)(b) they would use a crowbar to open his glove compartment. PO Mahon did not recall if \$87(2)(b) ever told him that officers lose their jobs over incidents like this. PO Mahon never told \$87(2)(b) that if he lost his job he would go to East Harlem and "fucking kill him." He did not use any profanity while speaking with \$87(2)(b) and did not hear any other officer say so. PO Mahon did not believe he ever said "shit" to \$87(2)(b) PO Gembecki did not recall any conversation between officers and §87(2)(b) while in the holding cell. PO Gembecki did not recall any officer using profanity with \$87(2)(b) or PO Mahon saying "shit" to § 87(2)(b) Cpt. Campbell testified that he never entered the precinct stationhouse and remained in the parking lot for the entirety of the time at the 25<sup>th</sup> Precinct. Though § 87(2)(b) testified that PO Mahon threatened to break his glove compartment and "fucking kill him" while they interacted in the holding cell, PO Mahon denied questioning § 87(2)(b) about any weapons and making any statements about damaging \$87(2)(b) s property, threatening him, or using profanity. PO Gembecki also denied hearing PO Mahon making the alleged statements. None of the officers were assigned BWC. **Civilian and Officer CCRB Histories** Cpt. Campbell has been a member of service for 18 years and has been a subject in 27 CCRB

complaints and 74 allegations, of which two were substantiated (BR 12):

o 200502945 involved an allegation of premises entered and/or searched and was closed as exonerated.

200510977 involved an allegation of discourteous word and was closed as unsubstantiated.

- o 200604049 involved an allegation of question and/or stop and was exonerated.
- 200607138 involved an allegation of premises entered and/or searched, which was unsubstantiated and a substantiated allegation of a threat of arrest. The Board recommended command discipline and the NYPD imposed no disciplinary action.

O § 87(2)(b)

- 200615942 involved allegations of physical force, retaliatory summons, threat of force, and discourteous word, which were closed as complainant unavailable.
- 200818202 involved allegations of refusal to provide name/shield number, which was closed as complaint withdrawn and discourteous word, which was closed as alleged victim uncooperative.
- 200902528 involved allegations of physical force and search of person, which were exonerated, frisk, which was closed as alleged victim uncooperative, and refusal to provide name/shield number and a stop, which were unsubstantiated.
- 201002245 involved allegations of search of person, vehicle search, vehicle stop, discourteous word, which were closed as complainant uncooperative.
- 201003874 involved allegations of a vehicle stop, which was exonerated §87(4-b), §87(2)(9)
- 201004296 involved allegations of search of person, which was unsubstantiated, \$87(4-b). \$87(2) and involved substantiated allegations of a frisk against Cpt. Campbell. The Board recommended command discipline B and the NYPD imposed command discipline B.
- 201006514 involved allegations of physical force, frisk, vehicle search, and a vehicle stop, which were closed as complainant uncooperative.
- o 201007740 involved allegations of physical force, property damaged, and discourteous word, which were closed as unsubstantiated, §87(4-5), §87(2)(9)
- 201011071 involved allegations of physical force and discourteous word, which were unsubstantiated, \$87(4-b). \$87(2)(9)
- 201013431 involved allegations physical force, stop, and discourteous word, which were unsubstantiated.
- § 87(2)(b)
- 201200877 involved allegations of a frisk, search of person, vehicle search, and a vehicle stop, which were closed as complainant uncooperative.
- 201205357 involved an allegation of physical force and was closed as unfounded.
- 201214464 involved allegations of physical force and search of person, which were closed as complainant uncooperative.
- o 201604953 involved allegations of refusal to provide name/shield number and threat of arrest, which were closed as complainant uncooperative.
- o 201606042 involved allegations of a chokehold, other force, and refusal to obtain medical treatment, which were closed as unsubstantiated.
- 201607318 involved allegations of question, threat of arrest, vehicle search, vehicle stop, and discourteous word, which were closed as mediation attempted.
- 201701656 involved allegations of frisk and search of person, which were closed as unfounded, and premises entered and/or searched, vehicle search, and vehicle stop, which were closed as unsubstantiated.
- o 201702741 involved an allegation of a stop and was closed as unsubstantiated.
- 201703214 involved allegations of questions and a vehicle stop, which were closed as unsubstantiated.

- 201703705 involved allegations of vehicle stop and discourteous word, which were closed as unsubstantiated.
- § 87(2)(g)
- PO Gembecki has been a member of service for 11 years and has been a subject in 12 CCRB complaints and 28 allegations, of which three were substantiated (BR 13):
  - o 201104532 involved an allegation of a stop and was closed as exonerated.
  - 201301642 involved an allegation of a chokehold and was closed as unsubstantiated.
  - 201503831 involved an allegation of a discourteous gesture and was closed as complainant uncooperative.
  - 201509979 involved allegations of a frisk, which was exonerated, a search of person and discourteous word, which were unsubstantiated, and a substantiated allegation of retaliatory summons against PO Gembecki. The Board recommended formalized training and the NYPD imposed formalized training.
  - § 87(2)(b)
  - o 201607230 involved allegations of premises entered and/or searched and threat of arrest, which was closed as unsubstantiated.
  - 201704064 involved allegations of chokehold and force, which were closed as unfounded, physical force, which was closed as exonerated, and frisk and vehicle search, which were closed as unsubstantiated.
  - 201710338 involved allegations of search and person and threat of arrest, which were closed as unsubstantiated.
  - 201806951 involved allegations of discourteous word, which was exonerated and substantiated allegations of discourteous word against PO Gembecki. The Board recommended instructions and the NYPD imposed instructions.
  - 201910492 involved allegations of refusal to provide name, stops, and vehicle search, which were closed as complainant uncooperative.
  - o 202000804 involved allegations of physical force and the case is still open.
  - § 87(2)(g)
- PO Mahon has been a member of service for eight years and has been a subject in 11 CCRB complaints and 41 allegations, of which ten were substantiated (BR 14):
  - 201608954 involved allegations of search of person and vehicle stop, which were closed as complainant uncooperative.
  - 201701656 involved allegations of premises entered and/or searched, refusal to provide name/shield number, vehicle search, and vehicle stop, which were closed as unsubstantiated.
  - o 201705176 involved an allegation of physical force and was closed as unsubstantiated.
  - 201707427 involved an allegation of physical force and was closed as complainant unavailable.
  - 201804513 involved allegations of search of person, which was unsubstantiated, § 37(4-b). §
    - and substantiated allegations of entry of premises, frisk, and other abuse of authority against PO Mahon. The Board recommended formalized training and the NYPD imposed formalized training.
  - o 201805222 involved an allegation of physical force and was closed pending litigation.
  - O 201808002 involved allegations of gun drawn, refusal to provide name, refusal to provide shield number, search of person, and strip search, which were closed as unsubstantiated, and substantiated allegations of frisk and stop against PO Mahon. The Board recommended command discipline A and the NYPD imposed command discipline A.

- § 87(2)(g)
- 202003847 involved allegations of discourteous word closed as unsubstantiated, \$87(4-b). \$ and substantiated allegations of nightstick as club, physical force, and false official statement against PO Mahon. The Board recommended charges and the NYPD has yet to impose discipline.
- o 202005973 involved allegations of failure to provide RTKA card, [87(2)(9)] and stop, and is still open.

## Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of July 20, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (BR 15).

§ 87(2)(b)			
Squad No.:	6		
Investigator: _	Julia Moran	Inv. Julia Moran	11/04/2021
_	Signature	Print Title & Name	Date
Squad Leader: _			
	Signature	Print Title & Name	Date
Reviewer:			
	Signature	Print Title & Name	Date